

1 **MOTLEY RICE LLC**

2 Mark I. Labaton (Bar No. 159555)
3 mlabaton@motleyrice.com
4 1100 Glendon Avenue, 14th Floor
5 Los Angeles, California 90024
6 Telephone: (310) 500-3488
7 Facsimile: (310) 824-2870

8 **LABATON SUCHAROW LLP**

9 Christopher J. Keller
10 ckeller@labaton.com
11 Eric J. Belfi
12 ebelfi@labaton.com
13 140 Broadway
14 New York, New York 10005
15 Telephone: (212) 907-0700
16 Facsimile: (212) 818-0477

17 *Counsel for the Institutional Investor Group
18 and Proposed Co-Lead Counsel for the Class*

19 *[Additional counsel appear on signature page]*

20 **UNITED STATES DISTRICT COURT
21 CENTRAL DISTRICT OF CALIFORNIA
22 SOUTHERN DIVISION**

23 RICHARD GAMMEL, Individually
24 and on Behalf of All Others Similarly
25 Situated,

26 Plaintiff,

27 vs.

28 HEWLETT-PACKARD COMPANY,
29 LEO APOTHEKER and CATHERINE
30 A. LESJAK,

31 Defendants.

32) Case No. 8:11-cv-01404-AG-RNB
33))
34)) **CLASS ACTION**
35))
36)) **THE INSTITUTIONAL
37)) INVESTOR GROUP'S
38)) MEMORANDUM OF POINTS
39)) AND AUTHORITIES IN
40)) SUPPORT OF ITS MOTION FOR
41)) APPOINTMENT AS LEAD
42)) PLAINTIFF AND APPROVAL OF
43)) SELECTION OF COUNSEL
44))
45)) DATE: December 12, 2011
46)) TIME: 10:00 a.m.
47)) COURTROOM: 10D
48)) JUDGE: Hon. Andrew J. Guilford
49))**

1 TABLE OF CONTENTS

2	TABLE OF AUTHORITIES	3 ii
3	PRELIMINARY STATEMENT	4 1
4	FACTUAL BACKGROUND.....	5 3
5	ARGUMENT	6
6	A. The Institutional Investor Group Should Be Appointed	
7	Lead Plaintiff in this Action.....	8 6
8	B. The Institutional Investor Group is the “Most Adequate	
9	Plaintiff”.....	10 8
10	1. The Institutional Investor Group Has Satisfied	
11	the PSLRA’s Procedural Requirements	12 8
12	2. The Institutional Investor Group Has the Largest	
13	Financial Interest in the Relief Sought by the	
14	Class.....	15 8
15	3. The Institutional Investor Group Satisfies Rule	
16	23’s Typicality and Adequacy Requirements.....	17 9
17	a. The Claims of the Institutional Investor	
18	Group Are Typical of Those of the Class	19 10
19	b. The Institutional Investor Group Will	
20	Fairly and Adequately Protect the Interests	
21	of the Class	22 11
22	4. The Members of the Institutional Investor Group	
23	Are Precisely the Type of Lead Plaintiffs	
24	Envisioned by the PSLRA.....	25 12
25	5. The Institutional Investor Group Has	
26	Demonstrated its Commitment to Efficient	
27	Prosecution of this Action	28 14
28	C. The Court Should Approve the Institutional Investor	
	Group’s Selection of Lead Counsel	16
	CONCLUSION.....	18

TABLE OF AUTHORITIES

Page(s)

CASES

4	<i>Aronson v. McKesson HBOC, Inc.</i> , 79 F. Supp. 2d 1146 (N.D. Cal. 1999).....	9
5	<i>In re Cavanaugh</i> , 306 F.3d 726 (9th Cir. 2002).....	<i>passim</i>
6		
7	<i>In re Cendant Corp. Litig.</i> , 264 F.3d 201 (3d Cir. 2001).....	13, 16
8		
9	<i>Dolan v. Axis Capital Holdings Ltd.</i> , No. 04-cv-8564, 2005 WL 883008 (S.D.N.Y. Apr. 13, 2005)	17
10		
11	<i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011 (9th Cir. 1998)	11
12		
13	<i>Janbay v. Canadian Solar, Inc.</i> , 272 F.R.D. 112 (S.D.N.Y. 2010).....	15
14		
15	<i>Morrison v. Nat'l Australia Bank Ltd.</i> , 130 S. Ct. 2869 (2010)	2
16		
17	<i>In re NPS Pharms., Inc. Sec. Litig.</i> , No. 2:06-cv-570, 2006 WL 6627948 (D. Utah Nov. 17, 2006).....	18
18		
19	<i>Perlmutter v. Intuitive Surgical, Inc.</i> , No. 10-CV-03451-LHK, 2011 WL 566814 (N.D. Cal. Feb. 15, 2011)	9, 11, 12, 13
20		
21	<i>Richardson v. TVIA, Inc.</i> , No. C 06 06304 RMW, 2007 WL 1129344 (N.D. Cal. Apr. 16, 2007).....	12
22		
23		
24	<i>In re SiRF Tech. Holdings, Inc. Sec. Litig.</i> , No. C 08-0856 MMC, 2008 WL 2220601 (N.D. Cal. May 27, 2008).....	12
25		
26	<i>Slaven v. BP Am., Inc.</i> , 190 F.R.D. 649 (C.D. Cal. 2000)	10
27		
28		

1	<i>Sofran v. LaBranche & Co., Inc.</i> , 220 F.R.D. 398 (S.D.N.Y. 2004).....	16
3	<i>In Spectranetics Corp. Sec. Litig.</i> , No.08-cv-2048, 2009 WL 1663953 (D. Colo. June 15, 2009).....	15
4	<i>In re Surebeam Corp. Sec. Litig.</i> , No. 03-cv-1721, 2004 WL 5159061 (S.D. Cal. Jan. 5, 2004).....	11
5	<i>Yanek v. Staar Surgical Co.</i> , No. CV 04-8007 SJO (CWx), 2004 WL 5574358 (C.D. Cal. Dec. 15, 2004)	15, 17
6	<i>Zucker v. Zoran Corp.</i> No. C06-04843, 2006 WL 3591156 (N.D. Cal. Dec. 11, 2006)	10

DOCKETED CASES

11	<i>In re American International Group, Inc. Sec. Litig.</i> , No. 04-cv-8141 (S.D.N.Y. 2004)	17
12	<i>In re Broadcom Corp. Class Action Litig.</i> , No. 06-cv-5036 (C.D. Cal. 2006)	17
13	<i>In re Countrywide Financial Corp. Sec. Litig.</i> , No. 07-cv-5295 (C.D. Cal. 2007)	17
14	<i>Eshe Fund v. Fifth Third Bancorp</i> , No. 08-cv-421, slip op. (S.D. Ohio Dec. 16, 2008).....	15
15	<i>In re HealthSouth Corp. Sec. Litig.</i> , No. 03-cv-1501 (N.D. Ala. 2003)	18
16	<i>In re Monster Worldwide, Inc. Sec. Litig.</i> , No. 07-cv-2237, Hr'g Tr. (S.D.N.Y. June 14, 2007)	18
17	<i>Morris v. Smith Micro Software Inc.</i> No. SACV 11-0976-AG, slip op. (C.D. Cal. Oct. 17, 2011)	10, 11
18	<i>Waldrep v. ValueClick Inc.</i> No. CV 07-5411-DDP (C.D. Cal. 2007)	14

1	STATUTES
2	15 U.S.C. § 78u-4(a) <i>et seq.</i> <i>passim</i>
3	Fed. R. Civ. P. 23(a) <i>et seq.</i> 9, 10, 11
4	
5	OTHER AUTHORITIES
6	H.R. Conf. Rep. No. 104-369 (1995), <i>reprinted in</i> 1995 U.S.C.A.A.N. 730..... 3, 16
7	
8	S. Rep. No. 104-98 (1995), <i>reprinted in</i> 1995 U.S.C.C.A.N. 679 3, 13
9	
10	
11	
12	
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1 The Institutional Investor Group, composed of Arkansas Teacher Retirement
 2 System (“Arkansas Teacher”), Union Asset Management Holding AG (“Union”),
 3 Labourers’ Pension Fund of Central and Eastern Canada (“Labourers’ Pension
 4 Fund”), and the LIUNA National (Industrial) Pension Fund and LIUNA Staff &
 5 Affiliates Pension Fund (collectively, the “LIUNA Funds”), respectfully submits
 6 this Memorandum of Points and Authorities in support of its Motion, pursuant to
 7 Section 21D(a)(3) of the Securities Exchange Act of 1934 (the “Exchange Act”),
 8 15 U.S.C. § 78u-4(a)(3), as amended by the Private Securities Litigation Reform
 9 Act of 1995 (the “PSLRA”), for the entry of an order: (1) appointing the
 10 Institutional Investor Group as Lead Plaintiff for a proposed Class consisting of all
 11 investors who purchased the common stock of Hewlett-Packard Company (“HP”
 12 or the “Company”) during the period from November 22, 2010, to August 18,
 13 2011, inclusive (the “Class Period”); and (2) approving the Institutional Investor
 14 Group’s selection of Labaton Sucharow LLP (“Labaton Sucharow”) and Motley
 15 Rice LLC (“Motley Rice”) as Co-Lead Counsel on behalf of the Class.

PRELIMINARY STATEMENT

17 Pending before the Court is a securities fraud class action complaint naming
 18 HP, a worldwide provider of information technology-related hardware, software,
 19 and services, Léo Apotheker (“Apotheker”), the Company’s former President and
 20 Chief Executive Officer (“CEO”), and Catherine A. Lesjak (“Lesjak”), the
 21 Company’s Chief Financial Officer (“CFO”) (collectively, “Defendants”). The
 22 Complaint alleges that, during the Class Period, Defendants repeatedly
 23 misrepresented key elements of the Company’s business plan and product
 24 development schedule, artificially inflating the price of its stock. When these
 25 misrepresentations were revealed to the public, HP’s share prices fell more than 20
 26 percent—its largest decline in more than 20 years.

27 The Institutional Investor Group respectfully submits that, pursuant to the
 28 Exchange Act, as amended by the PSLRA, it should be appointed Lead Plaintiff on

1 behalf of the putative Class. Each member of the Institutional Investor Group is a
 2 large and sophisticated institutional investor with ample resources and capability to
 3 oversee complex litigation, and, as summarized in the chart below, the Institutional
 4 Investor Group collectively has a truly massive financial stake in the pending
 5 litigation, whether measured under the first-in-first-out (“FIFO”) or last-in-first-out
 6 (“LIFO”) loss calculation methodology.

FUND NAME	FIFO	LIFO
Arkansas Teacher	\$11,682,495.77	\$1,059,344.34
Union	\$10,414,709.14	\$11,353,957.78
Labourers’ Pension Fund	\$1,913,325.55	\$1,832,018.31
LIUNA Funds	\$1,699,408.54	\$1,699,408.54
Total Losses of Institutional Investor Group	\$26,862,032.00	\$15,944,728.97

16 In light of these significant losses, the Institutional Investor Group has a
 17 very large financial interest in prosecuting this case—an interest believed to be
 18 greater than that of any competing movant. Each constituent member of the
 19 Institutional Investor Group also meets the typicality and adequacy requirements
 20 set out in Rule 23 of the Federal Rules of Civil Procedure (“Rule 23”), because
 21 their claims are typical of those of absent Class members and they will fairly and
 22 adequately represent the interests of the proposed Class. Like the other members
 23 of the putative Class, the members of the Institutional Investor Group seek
 24 recovery of losses incurred as a result of declines in the share price of HP stock
 25 purchased on the New York Stock Exchange (the “NYSE”) in the United States.
 26 See *Morrison v. Nat'l Austl. Bank Ltd.*, 130 S. Ct. 2869, 2886 (2010) (holding that
 27 Section 10(b) applies to securities registered on a U.S. stock exchange, irrespective
 28 of the nationality of the shareholder).

In a case of this scale, it is essential that any lead plaintiff applicant be large and sophisticated enough to play a meaningful role in managing potentially sprawling litigation. Here, each member of the Institutional Investor Group is the type of investor whose participation in securities class actions the PSLRA was meant to foster. *See H.R. Conf. Rep. No. 104-369 at 34 (1995), reprinted in 1995 U.S.C.A.N. 730, 733; S. Rep. No. 104-98 at 6 (1995), reprinted in 1995 U.S.C.A.N. 679, 685.* Indeed, each member of the Institutional Investor Group has experience prosecuting securities class actions on behalf of injured investors. *See Certifications, Ex. A to the Decl. of Mark I. Labaton (“Labaton Decl.”), submitted herewith.*

The individual members of the Institutional Investor Group have also demonstrated their commitment to working cohesively to efficiently prosecute this Action by conferring before this motion was filed to establish a clear and well-coordinated litigation strategy for this case. This plan, as reflected in the accompanying Joint Declaration submitted by the Institutional Investor Group, establishes protocols for joint decision-making and close oversight of proposed Co-Lead Counsel. *See* Joint Decl. of the Institutional Investor Group (the “Joint Decl.”), submitted herewith.

Finally, the Court should approve the Institutional Investor Group's selection of Labaton Sucharow and Motley Rice as Co-Lead Counsel on behalf of the proposed Class. In a case against one of the largest manufacturers in the world, represented by a law firm employing more than a thousand attorneys, the claims of the proposed Class will be best protected by the pooled experience and resources of Labaton Sucharow and Motley Rice, which have the expertise necessary to handle litigation of this scale.

FACTUAL BACKGROUND

27 HP is a leading provider of commercial and consumer personal computers
28 ("PCs") through its Personal Services Group segment, which accounts for nearly

1 20 percent of the worldwide personal computer market. The Company is
 2 headquartered in Palo Alto, California, and its stock is listed on the NYSE under
 3 the ticker symbol “HPQ.”

4 In April 2010, HP announced the \$1.2 billion purchase of Palm, Inc.
 5 (“Palm”), manufacturer of the Palm Pilot, one of the first widely adopted personal
 6 digital devices and developer of the celebrated webOS operating system. When
 7 HP announced its purchase of Palm, HP asserted that it would “rapidly accelerate
 8 the growth of the [webOS] platform.” Commentators and financial analysts were
 9 bullish on the Palm-HP union, noting that “with the proper hardware, webOS
 10 could easily make for an absolutely incredible . . . experience.”

11 Following the purchase of Palm, HP and its executives made numerous
 12 public statements highlighting the Company’s plan to leverage webOS as the
 13 cornerstone of its product strategy. For example, on February 7, 2011, HP
 14 announced the first HP devices using webOS and promised that webOS would be
 15 used for numerous devices, including cellular smartphones, tablets, PCs, and
 16 printers, “taking the webOS to other connected devices, including printers, and
 17 some form factors you haven’t seen before.” The Company announced that
 18 developers large and small, including Facebook and Selfaware Games, as well as
 19 content providers like Time Magazine and hybrid providers like DreamWorks,
 20 were moving to webOS. The Company also announced its first webOS devices
 21 planned for release in the spring and summer of 2011, including a tablet and two
 22 smartphones. These disclosures drove HP’s stock to its Class Period high by
 23 February 16, 2011, when HP common stock closed at \$48.99 per share.

24 HP and its executives also frequently told the market that its webOS strategy
 25 was working. For example, on February 22, 2011, noting that “the enthusiasm and
 26 anticipation for the webOS exceeds even our most optimistic expectations,” CEO
 27 Apotheker stated that webOS would be “providing a differentiated seamless
 28 experience across our tablets, smartphones, printers, PCs, and future form factors.”

1 During that same February 22, 2011 call, CFO Lesjak highlighted HP's
2 development of webOS, noting that "[w]e've been working with the developer
3 community to build up the application ecosystem and are pleased with the progress
4 so far. WebOS provides a differentiated platform that over time will redefine the
5 user experience across HP device solutions from consumer to enterprise, and from
6 smartphones to tablets to other devices."

7 Then, on March 14, 2011, Apotheker highlighted HP's strategy to "build
8 webOS into a leading connectivity platform. As the world's No. 1 maker of PCs
9 and printers, HP has the potential to deliver 100 million webOS-enabled devices a
10 year into the marketplace, and HP plans to use that scale along with leading
11 development tools to build a robust developer community that is eager to access
12 every segment of the market and every corner of the globe. . . . HP already has a
13 globally distributed installed base in both the consumer and enterprise, and ships
14 two printers and PCs a second, which will be webOS enabled—this huge, growing
15 installed base of devices provides enormous opportunity upon which to build HP-,
16 customer- and ecosystem-driven innovation." Defendants made similar statements
17 during a May 17, 2011 conference call addressing its financial results for the
18 second quarter of fiscal year 2011, and again during a June 2, 2011 conference
19 call.

20 However, unbeknownst to the public, by late 2010, the Company had
21 effectively abandoned its plan to leverage the webOS system to launch an
22 integrated family of consumer products. In an effort to bolster its share prices, the
23 Company concealed this abrupt change in strategy and continued to assure
24 investors that webOS was a crucial part of its business plan.

25 It was not until the late afternoon of August 18, 2011, that HP began to
26 disclose the truth of its changed plans in a press release warning of changes to
27 come, precipitating a sharp drop in share prices. Then, on the morning of August
28 19, 2011, HP issued its earnings announcement for the third quarter of 2011 and

1 dropped a real bombshell. The Company disclosed that it would cease
2 development of webOS-based products. The “ecosystem” touted just weeks
3 before that would include PCs, printers, tablets, phones, and other devices was
4 being abandoned. Instead, HP announced, it would consider licensing webOS or
5 selling it off, substantially—if not completely—throwing away the \$1.2 billion it
6 paid for Palm less than eighteen months earlier.

The August 18, 2011 disclosures triggered a 20 percent drop in the price of HP stock, which closed at \$23.60 per share on August 19, 2011, its biggest one day decline in more than 20 years, on volume of 128 million shares, shrinking the Company's market capitalization by approximately \$11 billion. The Company's misconduct and the revelations thereof have caused HP's stockholders to incur billions of dollars in losses.

ARGUMENT

A. The Institutional Investor Group Should Be Appointed Lead Plaintiff in this Action

The Institutional Investor Group meets every prerequisite for appointment as Lead Plaintiff in this Action. The PSLRA provides a straightforward procedure for selecting lead plaintiff for “each private action arising under [the Exchange Act] that is brought as a plaintiff class action pursuant to the Federal Rules of Civil Procedure.” 15 U.S.C. § 78u-4(a)(1); *see also* 15 U.S.C. § 78u-4(a)(3)(B) (setting forth procedure for selecting lead plaintiff); *In re Cavanaugh*, 306 F.3d 726, 729 (9th Cir. 2002) (same). Section 21D(a)(3)(A)(i) of the PSLRA provides that within 20 days after the date on which a class action is filed, the plaintiff shall cause to be published, in a widely circulated national business-oriented publication or wire service, a notice advising members of the purported plaintiff class:

(I) of the pendency of the action, the claims asserted therein, and the purported class period; and

(II) that, not later than 60 days after the date on which the notice is published, any member of the purported class may move the court to serve as lead plaintiff of the purported class.

15 U.S.C. § 78u-4(a)(3)(A)(i).

Under the PSLRA, a court is to consider any motion made by class members and appoint the movant that the court determines to be most capable of adequately representing the interests of the class as lead plaintiff. Specifically, the PSLRA provides that a court:

shall appoint as lead plaintiff the member or members of the purported plaintiff class that the court determines to be most capable of adequately representing the interests of class members (. . . the “most adequate plaintiff”)

15 U.S.C. § 78u-4(a)(3)(B)(i).

In adjudicating a lead plaintiff motion, a court shall adopt a presumption that the “most adequate plaintiff” is the person or group of persons who: (1) filed a complaint or made a motion to serve as lead plaintiff; (2) has the largest financial interest in the relief sought by the class; and (3) who otherwise satisfies the requirements of Rule 23. *See* 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I); *see also* *Cavanaugh*, 306 F.3d at 729-30.

Under the sequential procedure set forth by the Ninth Circuit in *Cavanaugh*, this presumption may be rebutted only by proof that the presumptive most adequate plaintiff “will not fairly and adequately protect the interests of the class” or “is subject to unique defenses that render such plaintiff incapable of adequately representing the class.” *Id.* at 741; *see also* 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II).

Here, the Institutional Investor Group meets each of these statutory prerequisites.

1 **B. The Institutional Investor Group is the “Most Adequate Plaintiff”**

2 The Institutional Investor Group respectfully submits that it is the
3 presumptive “most adequate plaintiff” because it has complied with PSLRA
4 procedural requirements, holds the largest financial interest of any movant, and
5 satisfies Rule 23’s typicality and adequacy requirements.

6 **1. The Institutional Investor Group Has**
7 **Satisfied the PSLRA’s Procedural Requirements**

8 The Institutional Investor Group has filed this motion to serve as lead
9 plaintiff in a timely manner. On September 13, 2011, the plaintiff in the first-filed
10 action against HP published a notice of that action pursuant to 15 U.S.C. § 78u-
11 4(a)(3)(A)(i). *See* Labaton Decl. Ex. B. The notice advised Class members of the
12 existence of the lawsuit and described the claims asserted therein. The notice also
13 advised Class members of their right to file a motion to be appointed as lead
14 plaintiff within 60 days of the date of the notice, i.e., on or before November 14,
15 2011. The Institutional Investor Group has filed its motion within 60 days of the
16 notice. Therefore, this Motion is filed within the time period prescribed by the
17 PSLRA.

18 **2. The Institutional Investor Group Has the Largest**
19 **Financial Interest in the Relief Sought by the Class**

20 In selecting the presumptive lead plaintiff, “the district court must compare
21 the financial stakes of the various plaintiffs and determine which one has the most
22 to gain from the lawsuit.” *Perlmutter v. Intuitive Surgical, Inc.*, No. 10-CV-03451-
23 LHK, 2011 WL 566814, at *2 (N.D. Cal. Feb. 15, 2011) (citing *Cavanaugh*, 306
24 F.3d at 529-30); *see also Garber v. Juniper Networks, Inc.*, No. C-06-04327 JW,
25 2006 WL 3365547, at *1-2 (N.D. Cal. Nov. 20, 2006) (citing 15 U.S.C. § 78u-
26 4(a)(3)(B)(iii)(I)).

27 During the Class Period, members of the Institutional Investor Group
28 purchased HP common stock on the NYSE at artificially inflated prices, and

1 suffered collective losses of \$26,862,032 on a FIFO basis and \$15,944,728 on a
2 LIFO basis. *See* Labaton Decl., Exs. A, C (Certifications and Loss Analysis,
3 respectively). The Institutional Investor Group is presently unaware of any other
4 movant with a larger financial interest in the outcome of the Action.
5 Consequently, and because it also satisfies Rule 23's typicality and adequacy
6 requirements, the Institutional Investor Group is entitled to the legal presumption
7 that it is the most adequate plaintiff.

8 **3. The Institutional Investor Group Satisfies
9 Rule 23's Typicality and Adequacy Requirements**

10 In addition to the largest financial interest requirement, the PSLRA also
11 directs that the lead plaintiff must “otherwise satisf[y] the requirements of Rule
12 23 . . .” 15 U.S.C. § 78u-(4)(a)(3)(B)(iii)(I)(cc). With respect to the
13 qualifications of a class representative, Rule 23(a) generally requires that its claims
14 be typical of the claims of the class and that the representative will fairly and
15 adequately protect the interests of the class. With respect to class certification,
16 Rule 23(a) requires that: (1) the class is so numerous that joinder of all members is
17 impracticable; (2) there are questions of law or fact common to the class; (3) such
18 claims are typical of those of the class; and (4) the representative will fairly and
19 adequately protect the interests of the class. Fed. R. Civ. P. 23(a). However, “[a]t
20 the lead plaintiff selection stage, all that is required is a ‘preliminary showing’ that
21 the lead plaintiff’s claims are typical and adequate.” *Aronson v. McKesson HBOC,*
22 *Inc.*, 79 F. Supp. 2d 1146, 1158 (N.D. Cal. 1999) (quoting *Wenderhold v. Cylink*
23 *Corp.*, 188 F.R.D. 577, 587 (N.D. Cal. 1999)); *see also Morris v. Smith Micro*
24 *Software Inc.* (“*Smith Micro*”), SACV 11-0976 AG (ANx), slip op. at 3 (C.D. Cal.
25 Oct. 17, 2011) (“When considering a motion to appoint a lead plaintiff under the
26 PSLRA, courts focus primarily on the typicality and adequacy prongs of Rule
27 23.”) (citing *Cavanaugh*, 306 F.3d at 730), attached as Labaton Decl. Ex. D.
28

1 As detailed below, each of the members of the Institutional Investor Group
2 satisfies the typicality and adequacy requirements of Rule 23(a), and is qualified to
3 be appointed as Lead Plaintiff in this Action.

4 **a. The Claims of the Institutional Investor**
5 **Group Are Typical of Those of the Class**

6 The typicality requirement of Rule 23(a)(3) is satisfied when the plaintiff
7 “(1) suffered the same injuries as class members; (2) as a result of the same course
8 of conduct; and (3) their claims are based on the same legal issues.” *Zucker v.*
9 *Zoran Corp.*, No. C 06-04843 WHA, 2006 WL 3591156, at *3 (N.D. Cal. Dec. 11,
10 2006). Rule 23(a) requires only that resolution of the common questions affect all,
11 or a substantial number of, class members. *Slaven v. BP Am., Inc.*, 190 F.R.D.
12 649, 657 (C.D. Cal. 2000).

13 Here, the legal and factual bases for the claims of the Institutional Investor
14 Group are typical of the claims of the members of the class, in that members of the
15 Group and other class members must show:

- 16 (a) whether Defendants’ actions violated the federal securities laws;
- 17 (b) whether Defendants caused HP to issue false and misleading
statements;
- 18 (c) whether Defendants’ conduct caused the market price of HP securities
to be artificially inflated during the Class Period and thereby caused the losses
suffered by class members; and
- 19 (d) whether the members of the class have sustained damages and, if so,
what is the proper measure of damages.

20 Because there are well-defined common questions of law and fact involved
21 in this Action, the claims asserted by the Institutional Investor Group, whose
22 members are not subject to any unique defenses, are typical of the claims of the
23 members of the proposed class. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020
24 (9th Cir.1998) (“Under [Rule 23’s] permissive standards, representative claims are

1 ‘typical’ if they are reasonably co-extensive with those of absent class members;
2 they need not be substantially identical.”). These shared claims, which are based
3 on the same legal theories and arise from the same events and course of conduct as
4 the Class’ claims, satisfy Rule 23(a)(3)’s typicality requirement. *In re Surebeam*
5 *Corp. Sec. Litig.*, No. 03-cv-1721, 2004 WL 5159061, at *6 (S.D. Cal. Jan. 5,
6 2004) (reciting typicality standard).

7 **b. The Institutional Investor Group Will Fairly
8 and Adequately Protect the Interests of the Class**

9 The adequacy of representation requirement of Rule 23(a)(4) is satisfied
10 when a representative party establishes that it “will fairly and adequately protect
11 the interests of the class.” Fed. R. Civ. P. 23(a)(4). “A lead plaintiff is adequate
12 when there are ‘common interests between the proposed lead plaintiff and the
13 class, and a willingness on the part of the proposed lead plaintiff to vigorously
14 prosecute the action.’” *Smith Micro*, SACV 11-0976 AG (ANx), slip op. at 3
15 (quoting *Ferrari v. Gisch*, 225 F.R.D. 599, 607 (C.D. Cal. 2004)). “The test for
16 adequacy asks whether the class representative and his counsel ‘have any conflicts
17 of interest with other class members’ and whether the class representative and his
18 counsel will ‘prosecute the action vigorously on behalf of the class.’” *Perlmutter*,
19 2011 WL 566814, at *13 (quoting *Staton v. Boeing Co.*, 327 F.3d 938, 957 (9th
20 Cir. 2003)). The adequacy requirement is met if no conflicts exist between the
21 representative’s interests and those of the class, and the representative’s attorneys
22 are qualified, experienced and generally able to conduct the litigation. *Richardson*
23 *v. TVIA, Inc.*, No. C 06 06304 RMW, 2007 WL 1129344, at *4 (N.D. Cal. Apr. 16,
24 2007).

25 The Institutional Investor Group will fairly and adequately represent the
26 interests of the proposed Class. The interests of the Institutional Investor Group
27 are not antagonistic to those of the Class and are clearly aligned with its members.
28 As detailed above, the claims of the Institutional Investor Group share

1 substantially similar questions of law and fact with the claims of members of the
2 proposed Class, and its claims are typical of the claims of members of the Class.

3 In addition, the Institutional Investor Group has selected counsel that is
4 highly experienced in prosecuting securities class actions such as this vigorously
5 and efficiently to serve as co-lead counsel. *See* Labaton Decl. Exs. E-F (Firm
6 Resumes of Labaton Sucharow and Motley Rice, respectively). The Institutional
7 Investor Group suffered substantial losses due to Defendants' alleged fraud and,
8 therefore, has a sufficient interest in the outcome of this case to ensure vigorous
9 prosecution of the Action. Accordingly, the Institutional Investor Group satisfies
10 the adequacy requirement.

11

12 **4. The Members of the Institutional**
13 **Investor Group Are Precisely the Type of**
14 **Lead Plaintiffs Envisioned by the PSLRA**

15 In addition to satisfying the requirements of Rule 23, the members of the
16 Institutional Investor Group, as large, sophisticated institutional investors, are the
17 exactly the type of investor Congress sought to encourage to assume a more
18 prominent role in securities litigation with the enactment of the PSLRA's lead
19 plaintiff provisions. *See In re SiRF Tech. Holdings, Inc. Sec. Litig.*, No. C 08-
20 0856 MMC, 2008 WL 2220601, at *3 (N.D. Cal. May 27, 2008) (noting that "by
21 enacting the PSLRA, Congress sought to increase the participation of institutional
22 investors in securities class actions"); *see also Perlmutter*, 2011 WL 566814, at
23 *13 ("Th[e] decision to appoint . . . an institutional investor[] also comports with
24 the PSLRA's goal to increase the likelihood that institutional investors would
25 serve as lead plaintiffs."). Congress noted in the PSLRA Statement of Managers
26 Report that the PSLRA was formulated "to increase the likelihood that institutional
27 investors will serve as lead plaintiff[]," in part, because "[i]nstitutional investors
28 and other class members with large amounts at stake will represent the interests of
the plaintiff class more effectively than class members with small amounts at

1 stake.” *In re Cendant Corp. Litig.*, 264 F.3d 201, 244, 264 (3d Cir. 2001) (quoting
2 S. Rep. No. 104-98, at 10 (1995), *reprinted in* 1995 U.S.C.C.A.N. 679, 690 and
3 H.R. Rep. No. 104-369, at 34 (1995), *reprinted in* 1995 U.S.C.C.A.N. 730, 733)).

4 Each member of the Institutional Investor Group answers the PSLRA’s call
5 for exceptionally qualified investors to lead this litigation. Established in March
6 1937 to provide retirement benefits to the thousands of current and former
7 employees of the Arkansas education community, Arkansas Teacher had more
8 than \$9.8 billion in assets held in trust for pension benefits as of June 30, 2010.
9 Arkansas Teacher is a combination contributory/non-contributory retirement
10 system governed by Arkansas’ retirement law and provides retirement, disability,
11 and survivor benefits to employees of Arkansas public schools and educationally
12 related agencies. Because Arkansas Teacher has served as a lead plaintiff in other
13 securities actions, its experience will benefit the Class. *See* Arkansas Teacher
14 Certification, Labaton Decl. Ex. A. For example, Arkansas Teacher successfully
15 prosecuted *In re Williams Securities Litigation*, 02-cv-72 (N.D. Okla.), in which
16 Arkansas Teacher was specifically selected by the court to replace lead plaintiffs
17 who had withdrawn for undisclosed reasons, resulting in a recovery of \$311
18 million for the class.

19 Union, based in Frankfurt, Germany, manages assets of approximately €169
20 billion, or approximately \$230.6 billion, as of September 30, 2011, and has more
21 than 2,400 employees. Union obtained valid assignments of claims that were
22 executed prior to Union’s motion for appointment as lead plaintiff. *See* Union
23 Assignment, Labaton Decl. Ex. G. Because Union has served as a lead plaintiff in
24 other securities actions, its experience will benefit the Class. *See* Union
25 Certification, Labaton Decl. Ex. A.

26 Labourers’ Pension Fund is a multi-employer pension plan based in the
27 Province of Ontario, Canada, that was established in February 1972. Since its
28 inception, the Fund has grown to have approximately \$2.5 billion in assets, more

1 than 37,500 members, and more than 14,600 pensioners and beneficiaries.
2 Because Labourers' Pension Fund has served as a lead plaintiff in other securities
3 actions, its experience will benefit the Class. *See Labourers' Pension Fund*
4 *Certification*, Labaton Decl. Ex. A.

5 The LIUNA Funds have more than 27,000 members and 16,000 pensioners.
6 The LIUNA Funds, which are headquartered in Washington D.C., had
7 approximately \$1.8 billion in assets under administration as of January 1, 2011.
8 Because the LIUNA Funds have served as a lead plaintiff in other securities
9 actions, their experience will benefit the Class. For example, the LIUNA Funds
10 served as lead plaintiff in *Waldrep v. ValueClick, Inc.*, Case No. CV 07-5411 DDP
11 (AJWx) (C.D. Cal.) and achieved a \$10 million settlement for the class.

12 The members of the Institutional Investor Group are sophisticated
13 institutional investors with sufficient resources to adequately litigate the Action
14 and supervise Class counsel. The members of the Institutional Investor Group
15 understand the fiduciary duties of a lead plaintiff. Moreover, because Arkansas
16 Teacher, Union, Labourers' Pension Fund, and the LIUNA Funds each have
17 served as a lead plaintiff in other securities class actions, *see Certifications*,
18 Labaton Decl. Ex. A, their experience will benefit the Class. Thus, as
19 demonstrated herein, the Institutional Investor Group is the very personification of
20 the lead plaintiff contemplated by the PSLRA.

21 **5. The Institutional Investor Group Has Demonstrated
Its Commitment to Efficient Prosecution of this Action**

22 As courts in this district have recognized, the aggregation of the losses of
23 the members of a group, and the appointment of a group of class members as lead
24 plaintiff, is appropriate under the PSLRA. 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I); *see*,
25 *e.g.*, *Yanek v. Staar Surgical Co.*, No. CV 04-8007 SJO (CWx), 2004 WL
26 5574358, at *4-5 (C.D. Cal. Dec. 15, 2004). The Institutional Investor Group has
27 demonstrated its commitment to working cohesively as a group in the prosecution
28

1 of the Action by executing the Joint Declaration. *See, e.g., In Spectranetics Corp.*
2 *Sec. Litig.*, 08-cv-2048, 2009 WL 1663953, at *6 (D. Colo. June 15, 2009)
3 (appointing group of investors as lead plaintiff because “the certifications and
4 declarations submitted by the members of the [group] demonstrate that [the group
5 members] can and will work together to oversee the litigation, and to monitor the
6 work of counsel”); *Eshe Fund v. Fifth Third Bancorp*, No. 08-cv-421, slip op. at 9
7 (S.D. Ohio Dec. 16, 2008) (appointing group of investors who “presented
8 sufficient information [in a joint declaration] to show that they are willing to work
9 together in the best interests of the proposed class”), attached as Labaton Decl.
10 Ex. H; *Janbay v. Canadian Solar, Inc.*, 272 F.R.D. 112, 119 (S.D.N.Y. 2010)
11 (noting that appointment of a lead plaintiff group is appropriate “where there is
12 evidence that unrelated members of a group will be able to function cohesively and
13 to effectively manage the litigation apart from their lawyers”) (internal quotations
14 and citations omitted). The Joint Declaration advises the Court of the Institutional
15 Investor Group’s sophistication, ability, and inclination to oversee the litigation,
16 past and continued meetings with each other and the counsel they selected
17 together, and the Group’s procedures and protocols for decision-making. *See* Joint
18 Decl. ¶¶ 6-14. As set out in the Joint Declaration, a close relationship already
19 exists between Labourers’ Pension Fund and the LIUNA Funds, which share a
20 common Trustee on their boards. *Id.* at ¶ 5.

21 The members of the Institutional Investor Group have conferred with each
22 other and counsel in connection with the filing of their joint motion for lead
23 plaintiff, and to discuss management of the litigation. *See id.* ¶ 7. Importantly, the
24 Institutional Investor Group, not its counsel, decided to file a joint motion for
25 appointment as lead plaintiff. *See id.* ¶¶ 7-8. Moreover, after filing their joint lead
26 plaintiff motion, the members of the Institutional Investor Group established
27 appropriate protocols for managing the litigation with each other and counsel to
28 “ensure this litigation proceeds efficiently, effectively, and in a non-duplicative

1 manner in accordance with the best interests of the proposed Class.” *Id.* ¶ 14.
2 Thus, the Court can be assured that the Institutional Investor Group will effectively
3 monitor and direct its counsel.

4 The PSLRA is clear that once the court determines that the movant with the
5 largest financial interest is adequate and typical, it should appoint that movant as
6 lead plaintiff. *See Sofran v. LaBranche & Co., Inc.*, 220 F.R.D. 398, 402
7 (S.D.N.Y. 2004) (quoting *Cavanaugh*, 306 F.3d at 732). Having established that it
8 has the largest financial interest in the relief sought by the Class and that it satisfies
9 the requirements of Rule 23, the Court should appoint the Institutional Investor
10 Group as Lead Plaintiff in the Action.

11 **C. The Court Should Approve the Institutional**
12 **Investor Group’s Selection of Lead Counsel**

13 The PSLRA vests authority in the lead plaintiff to select and retain lead
14 counsel for the class, subject to the court’s approval. *See* 15 U.S.C. § 78u-
15 4(a)(3)(B)(v). “[T]he court should generally employ a deferential standard in
16 reviewing the lead plaintiff’s choices.” *Cendant*, 264 F.3d at 274. Courts should
17 not disturb the lead plaintiff’s choice of counsel unless necessary to “protect the
18 interests of the plaintiff class.” H.R. Conf. Rep. No. 104-369 at 35, *reprinted in*
19 1995 U.S.C.C.A.N. at 734; *see also Cavanaugh*, 306 F.3d at 734 (“Selecting a
20 lawyer in whom a litigant has confidence is an important client prerogative and we
21 will not lightly infer that Congress meant to take away this prerogative from
22 securities plaintiffs. And, indeed, it did not. While the appointment of counsel is
23 made subject to the approval of the court, the Reform Act clearly leaves the choice
24 of class counsel in the hands of the lead plaintiff.”). The Institutional Investor
25 Group has selected Labaton Sucharow and Motley Rice, highly-qualified counsel,
26 to serve as Co-Lead Counsel for the Class. *See, e.g., Dolan v. Axis Capital*
27 *Holdings Ltd.*, No. 04-cv-8564, 2005 WL 883008, at *5 (S.D.N.Y. Apr. 13, 2005)
28 (appointing co-lead plaintiffs and counsel because that structure would allow

1 plaintiffs and counsel to “pool financial resources, knowledge and experiences,
2 and may also reap the ‘benefits of joint decision-making’ when pressed with
3 difficult choices”); *Yanek*, 2004 WL 5574358, at *7 (appointing co-lead counsel
4 that the court determined were “qualified and competent”). The Institutional
5 Investor Group explained the basis for its selection in its Joint Declaration, noting
6 the ways in which a co-lead counsel structure will benefit the Class in this Action.
7 See Joint Decl. ¶ 13.

8 Labaton Sucharow has excelled as lead counsel in numerous important
9 actions on behalf of defrauded investors. Labaton Sucharow is lead counsel in *In*
10 *re American International Group, Inc. Securities Litigation*, No. 04-cv-8141
11 (S.D.N.Y. 2004), in which it recently achieved settlements-in-principle totaling
12 approximately \$1 billion. In addition, Labaton Sucharow is lead counsel in *In re*
13 *Countrywide Financial Corp. Securities Litigation*, No. 07-cv-5295 (C.D. Cal.
14 2007), which resulted in a settlement of \$624 million—the largest securities fraud
15 settlement arising from the financial crisis of 2007 to 2008. Labaton Sucharow
16 also serves as lead counsel in *In re Broadcom Corp. Class Action Litigation*, No.
17 06-cv-5036 (C.D. Cal. 2006), the largest accounting restatement arising from
18 options backdating. Labaton Sucharow achieved a cash settlement of \$160.5
19 million for the class—at the time, the second-largest cash settlement in an options
20 backdating case. Labaton Sucharow also served as co-lead counsel in *In re*
21 *HealthSouth Corp. Securities Litigation*, No. 03-cv-1501 (N.D. Ala. 2003), the
22 largest securities fraud arising out of the healthcare industry, which resulted in a
23 total settlement amount of \$804.5 million for the class. Labaton Sucharow is
24 currently serving as the court-appointed lead or co-lead counsel in the securities
25 fraud cases against The Bear Stearns Cos., Inc., Federal National Mortgage
26 Association (Fannie Mae), Satyam Computer Services Ltd., and Goldman Sachs
27 Group, Inc., among other significant investor litigations. In *In re Monster*
28 *Worldwide, Inc. Securities Litigation*, No. 07-cv-2237, Hr’g Tr. at 24:25-25:1

1 (S.D.N.Y. June 14, 2007), Judge Jed S. Rakoff appointed Labaton Sucharow as
2 lead counsel, stating that “the Labaton firm is very well known to . . . courts for the
3 excellence of its representation.” *See also* Labaton Sucharow Firm Resume,
4 Labaton Decl. Ex. E.

Motley Rice has substantial experience in the prosecution of shareholder and securities class actions. As the court in *In re NPS Pharmaceuticals, Inc. Securities Litigation*, No. 2:06-cv-570, 2006 WL 6627948, at *4 (D. Utah Nov. 17, 2006), noted, “[Motley Rice has] expertise and experience in the prosecution of shareholder and securities class actions and, as a result, [is] adequate to represent the interests of the class.” See Motley Rice Firm Resume, Labaton Decl. Ex. F. Thus, the Court may be assured that by granting this motion, the Class will receive the highest caliber of legal representation.

13 Not only are Labaton Sucharow and Motley Rice each well-qualified and
14 experienced law firms in their own right, but they have a successful track record of
15 working together cooperatively as co-lead counsel.

CONCLUSION

17 For the foregoing reasons, the Institutional Investor Group respectfully
18 requests that the Court: (1) appoint the Institutional Investor Group as Lead
19 Plaintiff; and (2) approve its selection of Labaton Sucharow and Motley Rice as
20 Co-Lead Counsel.

22 | Dated: November 14, 2011

Respectfully submitted,

By: /s/ *Mark I. Labaton*

Mark I. Labaton (Bar No. 159555)
mlabaton@motleyrice.com
MOTLEY RICE LLC
1100 Glendon Avenue, 14th Floor
Los Angeles, California 90024
Telephone: (310) 500-3488
Facsimile: (310) 824-2870

1 Ann K. Ritter
2 aritter@motleyrice.com
3 James M. Hughes
4 jhughes@motleyrice.com
5 Vincent I. Parrett
6 vparrett@motleyrice.com
7 William S. Norton
8 bnorton@motleyrice.com
9 **MOTLEY RICE LLC**
10 28 Bridgeside Blvd.
11 Mt. Pleasant, South Carolina 29464
12 Telephone: (843) 216-9000
13 Facsimile: (843) 216-9450

14 Christopher J. Keller
15 ckeller@labaton.com
16 Eric J. Belfi
17 ebelfi@labaton.com
18 Michael W. Stocker (Bar No. 179083)
19 mstocker@labaton.com
20 **LABATON SUCHAROW LLP**
21 140 Broadway
22 New York, New York 10005
23 Telephone: (212) 907-0700
24 Facsimile: (212) 818-0477

25 *Counsel for the Institutional Investor Group
and Proposed Co-Lead Counsel for the Class*

26 Stephen R. Basser
27 sbasser@barrack.com
28 Samuel M. Ward
sward@barrack.com
29 **BARRACK, RODOS & BACINE**
30 One America Plaza
31 600 West Broadway, Suite 900
32 San Diego, California 92101
33 Telephone: (619) 230-0800
34 Facsimile: (619) 230-1874

35 Daniel E. Bacine
36 dbacine@barrack.com
37 **BARRACK, RODOS & BACINE**

1 Two Commerce Square
2 2001 Market Street, Suite 3300
3 Philadelphia, Pennsylvania 19103
4 Telephone: (215) 963-0600
5 Facsimile: (215) 963-0838

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Additional Counsel to the LIUNA Funds

1 **PROOF OF SERVICE VIA ELECTRONIC POSTING**
2 **PURSUANT TO CENTRAL DISTRICT OF CALIFORNIA**
3 **LOCAL RULES AND ECF GENERAL ORDER NO. 08-02**

4 I, the undersigned, say:

5 I am a citizen of the United States and am employed in the office of a
6 member of the Bar of this Court. I am over the age of 18 and not a party to the
7 within action. My business address is 1100 Glendon Avenue, 14th Floor, Los
Angeles, California 90024.

8 On November 14, 2011, I caused to be served the following documents:

9 1. Notice of Motion and Motion of the Institutional Investor Group for
10 Appointment as Lead Plaintiff and Approval of Selection of Counsel;
11 2. Memorandum of Points and Authorities in Support thereof;
12 3. Declaration of Mark I. Labaton in Support thereof;
13 4. Joint Declaration of the Institutional Investor Group in Support
14 thereof, and
15 5. Certification and Notice of Interested Parties,

16 by posting these documents to the ECF Website of the U.S. District Court for the
17 Central District of California, for receipt electronically by the parties on the
18 attached Service List and by mail upon those parties so listed.

19 I certify under penalty of perjury under the laws of the United States of
20 America that the foregoing is true and correct. Executed on November 14, 2011,
21 at Los Angeles, California.

22 _____
23 *s/ Kathy Montenegro*
24 Kathy Montenegro
25
26
27
28

SERVICE LIST

VIA ELECTRONIC NOTICE

- **Catherine J. Kowalewski**
davew@rgrdlaw.com
- **Darren J. Robbins**
e_file_sd@rgrdlaw.com
- **David C. Walton**
davew@rgrdlaw.com
- **Jennifer R. Bagosy**
jbagosy@morganlewis.com
- **Jill M. Baisinger**
jbaisinger@morganlewis.com
- **Karen Pieslak Pohlmann**
kpohlmann@morganlewis.com
- **Marc J. Sonnenfeld**
msonnenfeld@morganlewis.com
- **Monique E. Cho**
mcho@morganlewis.com
- **Robert Elliot Gooding, Jr**
rgooding@morganlewis.com
- **Laura Danielle Smolowe**
laura.smolowe@mto.com

VIA U.S. PRIORITY MAIL.

None